IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.97 (S/B) of 2005

Dr. Vijay Kumar Doharey, S/o Sri Bihari Lal Doharey,
Serving as District Horticulture Officer, Almora

.....Petitioner

Versus

1. State of Uttaranchal through Principal Secretary, Department of Horticulture and Food Processing, Government of Uttaranchal, Dehradun
2. Director, Horticulture and Food Processing, Uttaranchal, Udhyan Bhawan, Chaubatia, Ranikeht, District Almora
3. State of U.P. through Secretary, Department of Horticulture and Food Processing, Government of U.P., Lucknow
4. Principal Secretary, Uttaranchal Co-ordination Department, Government of U.P., Lucknow

.....Respondents

Sri Manoj Tewari, learned counsel for the petitioner.
Sri K.P. Upadhyaya, learned standing counsel for the State of Uttaranchal.
Mr. Beena Pandey, learned standing counsel for the State of U.P.

Dated: March 6, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for writ of mandamus commanding Respondent No. 1 to forthwith release salary and other admissible allowances to the petitioner for the period between 12.01.2001 to 09.12.2001 as has been done in case of other similarly situate State employees.

2. The short controversy involved in the writ petition is that the petitioner has not been paid the salary for the period 12.01.2001 upto 09.12.2001. The petitioner is holding the Group-B post of Horticulturist in

Horticulture and Food Processing Department and he was appointed under the then Hill Sub Cadre Rules Which was operative before the appointed date i.e. 09.11.2000.

3. The petitioner gave his option for allocation to State of Uttar Pradesh. Without their being any allocation under Section 73(2) of U.P. Reorganization Act, 2000, the petitioner was relieved by the State of Uttaranchal for State of Uttar Pradesh on 11.01.2001. The petitioner reported in the State of Uttar Pradesh on 15.01.2001. The State of Uttar Pradesh after considering the material did not allow the petitioner to join there and vide order-dated 05.12.2001, the representation of the petitioner-dated 22.09.2001 was rejected. Thereafter, the petitioner having no option left, gave his joining in the office of Principal Secretary, Department of Horticulture and Food Processing, Government of Uttaranchal, Dehradun on 10.12.2001.

4. Since the petitioner was appointed under the Hill Sub Cadre Rules and he is not at fault for payment of salary, therefore, State of Uttaranchal is directed to pay the salary to the petitioner like other similarly situate State employees have been paid in accordance with leave rules or medical rules from 12.01.2001 to 09.12.2001.

5. With the aforesaid observation, the petition is disposed of accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang